



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2005

Mr. Warren Spencer
Legal Advisor
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2005-02477

Dear Mr. Spencer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220926.

The Plano Police Department (the "department") received a request for information relating to a named individual during a specified time interval. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

We first note that the submitted information includes an arrest warrant and the affidavit for the warrant. As amended by the 78th Legislature, article 15.26 of the Code of Criminal Procedure provides as follows:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk

¹We note that you have redacted some of the submitted information that you seek to withhold from the requestor. Because we are able in this instance to ascertain the nature of the information in question, we will determine whether it is excepted from public disclosure. In the future, however, you should refrain from redacting any information that you submit to this office in seeking an open records ruling. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26 (emphasis added). Thus, the submitted arrest warrant and the affidavit for the warrant are made public by article 15.26. As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the department must release the arrest warrant and arrest warrant affidavit that we have marked under article 15.26 of the Code of Criminal Procedure.

Next, we address your claim under section 552.101. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

In this instance, the request is for any and all information regarding a named individual. This request for unspecified law enforcement information implicates the individual's right to privacy. Therefore, to the extent that the department maintains any information other than the arrest warrant and the arrest warrant affidavit that relates to the named individual as a criminal suspect, arrestee, or defendant, any such information must be withheld from the requestor under section 552.101 in conjunction with privacy under *Reporters Committee*.

In summary: (1) the department must release the marked arrest warrant and arrest warrant affidavit under article 15.26 of the Code of Criminal Procedure; and (2) any other information held by the department that relates to the named individual as a criminal suspect, arrestee, or defendant must be withheld from the requestor under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

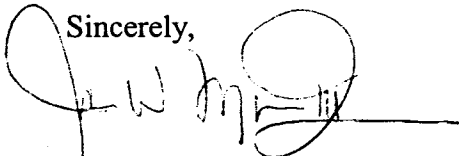
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 220926

Enc: Submitted documents

c: Ms. Christina McElroy
505 Hickory Drive
Murphy, Texas 75094
(w/o enclosures)